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25207 7590 03/31/2009 BRYAN CAVE POWELL GOLDSTEIN ONE ATLANTIC CENTER FOURTEENTH FLOOR 1201 WEST PEACHTREE STREET NW ATLANTA, GA 30309-3488				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ERIC NEIL MILLER
and
WILLIAM C. STANDIFER, IV

Appeal 2009-0491
Application 09/770,599
Technology Center 3600

Decided: ¹ March 31, 2009

Before MURRIEL E. CRAWFORD, ANTON W. FETTING, and
JOSEPH A. FISCHETTI, *Administrative Patent Judges*.

JOSEPH A. FISCHETTI, *Administrative Patent Judge*.

DECISION ON APPEAL

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

This is an appeal under 35 U.S.C. §§ 6(b) and 134(a) from the final rejection of claims 18-26. We have jurisdiction under 35 U.S.C. § 6(b). (2002)

Representative claim 18 reads as follows:

18. A method for a donor to make a monetary charitable contribution to a charitable organization, comprising the steps of:
 - (a) receiving at a first Internet website an indication of interest from a donor to make a monetary contribution to a charitable organization, the first Internet website being an Internet website of the charitable organization;
 - (b) hyperlinking the donor to a second Internet website to allow the donor to make the monetary contribution, the second Internet website not being an Internet website of the charitable organization;
 - (c) the second Internet website providing information regarding projects of the charitable organization to the donor;
 - (d) the second Internet website receiving a selection of a project from the donor;
 - (e) the second Internet website providing a plurality of contribution options to the donor for the selected project, the contribution options comprising at least a gift and at least one of the following other contribution options: a sponsorship level, a membership, or a purchase of a tangible item;

The Examiner rejected claims 18-26 under 35 U.S.C. §103(a) as being unpatentable Over Red Cross in view of Bezos and Hopkins.

FINDINGS OF FACT

1. The Examiner found

www.redcross.org fairly teaches the claimed invention except for (1) step (b) for hyperlinking the customer (donor) to a 2nd website to allow the customer (donor) to do business (donating money), wherein the 2nd website does not belong to the first entity or Red Cross; (2) carrying out steps (c.)-(1) on the 2nd Internet website, and (3) step (f) contains information with respect to a tax deductible amount in conjunction with at least one of the other contribution options. (Answer 7.)

2. The Examiner further found that Bezos discloses hyperlinking the 1st website entity (1st business entity or "associate") to a 2nd website entity (2nd business entity or "merchant") to allow the customer, who accesses the 1st website entity and with interest to carry out a business activity (purchase an item or service) with the 1st website entity, to complete the same business activities (i.e. purchase an item or a service) at the 2nd website entity, thus allowing the 1st business entity to effectively become an online retailer immediately by simply enrolling and setting up a website if it does not have

sufficient resources to effectively handle online tasks such as processing online orders, shipping products, collecting payment, and providing customer service, etc. (Answer 7-8)

3. The Examiner thus concludes:

Therefore, it would have been obvious to a skilled artisan to modify the teachings of www.redcross.org by including the teachings (b) hyperlinking to a 2nd website and carry out the same business activities (processing a donation activities) on the 2nd website if www.redcross.org wants to become an online business entity immediately and does not have the resources to effectively carry out an online business such as processing online orders, shipping products, collecting payment, and providing customer service as taught by BEZOS et al on col. 6, lines 41-47.
(Answer 8)

4. Bezos discloses:

...because the merchant handles the tasks of processing online orders, shipping products, collecting payment, and providing customer service, the associate need not be concerned with these tasks. Thus, the associate can effectively become an online retailer immediately, by simply enrolling as an associate and setting up a Web site.

In addition, because the merchant Web site 106 includes software for automating the primary functions of doing business with associates (such

as associate enrollment, referral transaction processing, and commission tracking and payment), the architecture allows the merchant to do business with large numbers (e.g., thousands) of associates with minimal supervision by the merchant. Further, because the commissions paid to the associates are performance-based, there is little or no downside to the merchant to enrolling marginally-productive associates that provide relatively small numbers of referrals. (Bezos, col.6, ll. 41-58.)

5. Bezos discloses that the associate's website typically, "...is owned and operated by an individual or business entity ("associate") that is not in the same business as that of the merchant. (Bezos, col. 6, ll. 52-54.)

6. According to the Examiner, in Bezos, "...the associate is or functions as the "1st entity" and the "merchant" is the "2nd entity" and the "customer" is the "donor" (Answer 14)

ANALYSIS

We cannot sustain the rejection of claims 18-26 under 35 U.S.C. §103(a) as being unpatentable over Red Cross in view of Bezos and Hopkins for the reasons set forth below.

Claims 18, 24 and 26 are independent claims and each independent claim 18, 24 and 26 requires "the *first Internet website being an Internet website of the charitable organization.*" In other words, the first website must be the website of the charity which the donor wishes to pay. But, according to the Examiner, his reading of Bezos makes the associate and not

the merchant/charity the first Internet website² (FF 6). This is error because the claim requires that the entity with whom the person wishes to make the contribution, e.g. the charity, be at the first website, and this is not met by the associate who only serves as a referring entity to the merchant in Bezos (FF 4).

Even reading the associate website 100 in Bezos as the first entity website, analogous to the charitable organization website, we likewise cannot see where this arrives at the claimed method. This is because in Bezos, the associate website serves to funnel orders into the merchant site 103 rather than away from the merchant site (FF 4). This is done purposefully so that that merchant can focus on his business as opposed to marketing etc. (FF 4.) In fact, Bezos discloses leveraging several associates such that for a given merchant, a large number (e.g. thousands) of associates can be linked (FF 4). Bezos discloses that the associate website “is not in the same business as that of the merchant” (FF 5), and thus is not the merchant or charitable organization to which the consumer/donor actually gives as required by the claims. The associates in Bezos further can be several and each feed into a single merchant, which is different from Appellant’s invention where several charities (analogous to the merchant) feed a single second entity (analogous to Bezos’ associate).

² The Examiner first presents corresponding the first entity with the associate and the second entity with the merchant in the Examiner’s Answer page. 14)

Moreover, modifying Bezos to make the associate website 100 a merchant or charity organization website would directly teach away from what Bezos discloses. This would change the character of the associate websites 100 which according to Bezos are not in the same business of that of the merchant (FF 5), but rather are merely referring entities and are not of merchant statuses (FF 4). Further, as discussed above, since the associates in Bezos can be several and each feed into a single merchant, this would result in having several distinct Red Cross websites each feeding a single associate which is not what is claimed. *See United States v. Adams*, 86 S.Ct. 708 (1966) (“...when the prior art teaches away from combining certain known elements, discovery of a successful means of combining them is more likely to be unobvious”).

Appellant’s Reply Brief responds to the proposed modification to Bezos instead of Red Cross and asserts, using a claim chart, how such a modification would not result in the claimed steps (Reply Br. 4-7). The Examiner’s acknowledgement of the Reply Brief does not respond to these points.

Furthermore, even assuming that one uses Red Cross as the first entity website as proposed by the Examiner in the Final Office Action and modifies it using Bezos to “teach[] (b) hyperlinking to a 2nd website and carry out the same business activities (processing a donation activities) on the 2nd website if www.redcross.org if www.redcross.org wants to become an online business entity immediately...” (FF 1-3), the combination would

still not result in the method as claimed. This is because Bezos discloses that merchant “..handles the tasks of processing online orders, shipping products, collecting payment, and providing customer service, the associate need not be concerned with these tasks.” (FF 4). Thus, the effect of the proposed hyperlink as taught by Bezos would be a dead end insofar as any attempt to complete the transaction because Bezos explicitly teaches accepting payments is done at the merchant website, which in the proposed combination, will still be with Red Cross.

We thus reverse the rejection of claims 18-26 under 35 U.S.C. §103(a) as being unpatentable over Red Cross in view of Bezos and Hopkins.

REVERSED

ewh

BRYAN CAVE POWELL GOLDSTEIN
ONE ATLANTIC CENTER FOURTEENTH FLOOR
1201 WEST PEACHTREE STREET NW
ATLANTA GA 30309-3488